## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL SMITH Claimant	}
VS.	) ) ) ) Docket No. 102 712
BOURELL'S FLOORS, INC. Respondent AND	) Docket No. 193,712
AMERICAN STATES INSURANCE Insurance Carrier	)

## <u>ORDER</u>

Respondent appeals from a December 13, 1994 Preliminary Hearing Order entered by Administrative Law Judge George R. Robertson granting claimant benefits.

## ISSUES

The respondent contends claimant was an independent contractor and, therefore, not entitled to benefits.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. For purposes of the Workers Compensation Act, the claimant is an employee of the respondent. Respondent retails carpet and tiles and sells most of its inventory on an installed basis. Ninety percent (90%) of claimant's work was performed for the respondent who withheld monies from claimant for workers compensation insurance coverage. Respondent guaranteed claimant's work, scheduled his installation activities, and advised claimant of the manner in which the floor coverings were to be installed. In addition, respondent reserved the right to pull claimant off the job. When considering all the above factors, the Appeals Board finds claimant is an employee of the respondent as contemplated by K.S.A. 44-508.

IT IS SO ORDERED.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge George R. Robertson, entered in this proceeding on December 13, 1994, should be, and hereby is, affirmed in all respects.

Dated this day of April	I, 1995.
Ī	BOARD MEMBER
Ī	BOARD MEMBER
Ī	BOARD MEMBER

c: Andrew L. Oswald, Hutchinson, KS Edward D. Heath, Jr., Wichita, KS George R. Robertson, Administrative Law Judge George Gomez, Director